

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3565 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOVINDBHAI SHAMALBHAI VAGHARI

Versus

STATE OF GUJARAT

Appearance:

MR AD PADIVAL for Petitioners
SERVED BY DS for Respondent No. 1
MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision:30/07/96

C.A.V. JUDGEMENT

The petitioner filed this writ petition before

this Court with an apprehension of terminating his services. Notice was issued by this Court on 15.5.1996 and the order of maintaining status quo has been passed. Shri D.A. Bambhania, learned counsel for the respondents, filed a copy of the order of the Government dated 5.2.1996 and submitted that the temporary posts of karkoons, typists (Gujarati), peons and drivers due to the heavy work load of the parliamentary elections were created for the period from 1.3.1996 to 31.5.1996. Mr D.A. Bambhania contended that the petitioner was appointed against temporary posts though after calling the names from the employment exchange and a local selection. Mr Bambhania further contended that the appointment of the petitioner was against a temporary post which came to an end on 31.5.1995 and it was a temporary appointment for a fixed term and as such it will come to an end by efflux of time. The apprehension of the petitioner that his services were likely to be terminated is not well founded. It is not the case of termination of service but a case of automatic termination by expiry of period of appointment as well as the period for which the post has been created.

2 Mr Bambhania further states that the petitioners were appointed from time to time on creation of temporary posts for election process firstly for panchayat elections and secondly for state assembly and thirdly for parliament elections. Merely working on temporary posts on temporary basis, Mr Bambhania states that, no right whatsoever has been accrued to the petitioner to continue on the post. The learned counsel for the petitioner has not controverted the aforesaid facts stated by Shri Bambhania as well as the order dated 5.2.1996. But, he has contended that earlier also the persons were appointed against the temporary posts created for election work and their services were regularised. It has next been contended that the posts are lying vacant and as such even if the temporary posts are to be abolished on 31.5.1996, their services should be regularised.

3 I have considered the rival contentions made by the learned counsels for the parties. The petitioners are claiming regularisation in their services. It is not in dispute that the petitioners were appointed against the temporary posts. Looking to the nature of appointment which is a fixed term appointment even it cannot be said to be a case of retrenchment which attracts the provisions of Section 25F or 25G of the Industrial Disputes Act, 1947. A temporary government servant does not acquire the right to continue in the

post more so where a post itself is created for a fixed term. The temporary government servant cannot claim the status of permanent employee unless such a status has been conferred by a rule or it is a condition of the appointment which is not the case here. Even if the posts are lying vacant, I fail to see any justification in the claim of the petitioners for regularisation. When the posts itself were created for fixed term, no order of regularisation can be passed merely because the petitioner has been selected after their names have been called from the employment exchange. Their temporary appointment cannot culminate into permanent employment and a temporary post also do not culminate into a permanent post. A fixed term appointment on expiry of the term comes to an end automatically on the expiry of the term of employment. In the present case also, after the completion of the term of the post, the employee has no right to continue on the post. The post on which the petitioner was appointed will stand abolished on 31.5.1996 and as such their appointments will automatically come to an end. Even in such cases no order of termination is necessary and in fact are not passed. In case the prayer of the petitioner is allowed, then, what this Court will do is that it will allow a temporary appointee to continue and further a post which has been for fixed term to continue. To create a post is absolutely domain of the respondent and this Court cannot issue a writ of mandamus to continue the petitioners on the temporary posts created for parliament elections work or extending their period of appointment as well as the the period of posts. None of the legal or fundamental rights of the petitioners is infringed in the present petition. The writ petition is wholly misconceived and the same is therefore rejected. The interim order passed earlier stands vacated. Notice discharged.
